

NOV 22 1993

LAW OFFICES

BIRCH, HORTON, BITTNER AND CHEROT

A PROFESSIONAL CORPORATION

1155 CONNECTICUT AVENUE, N.W. • SUITE 1200 • WASHINGTON, D.C. 20036 • (202) 659-5800 • TELECOPIER (202) 659-1027

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

THOMAS L. ALBERT**
THOMAS P. AMADIO
J. GEOFFREY BENTLEY*
RONALD G. BIRCH**
WILLIAM H. BITTNER
KATHRYN A. BLACK
PHILIP BLUMSTEIN
CORY R. BORGESON
DOUGLAS S. BURDIN*
JOHN J. BURNS
SUZANNE CHEROT
JOHN J. CONNORS
KIM DUNN
RALPH W. ERTZ
JOSEPH W. EVANS
STEPHEN K. GARDNER*

WILLIAM P. HORN*
HAL R. HORTON
STEPHEN H. HUTCHINGS
ROY S. JONES, JR.*
MARC W. JUNE
BRAD S. KANE
CRISTINA D. LEE
STANLEY T. LEWIS
LESLIE LONGENBAUGH
RONALD W. LORENSEN
L. MERRILL LOWDEN
ANNE E. MCINERNEY*†
GREGORY A. MILLER
GAIL R. OBA
MICHAEL J. PARISE

TIMOTHY J. PETUMENOS
ELIZABETH A. PHILLIPS
GLEN PRICE
MICHAEL V. REUSING
ELISABETH H. ROSS**
JONATHAN B. RUBINI
E. BUDD SIMPSON
STEPHEN F. SORENSEN
JONATHAN K. TILLINGHAST
JEFFERY D. TROUTT
D. KEVIN WILLIAMS
JOSEPH E. WRONA
SUSAN E. WUORINEN*
JOSEPH A. WEBER
ANNE W. YATES*

OF COUNSEL
JOHN J. RHODES, III*

* D.C. BAR
** D.C. AND ALASKA BAR
† MARYLAND BAR
OHIO BAR
* ARIZONA BAR
† VIRGINIA BAR
ALL OTHERS ALASKA BAR

1127 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501-3563
(907) 276-1550
TELECOPIER (907) 276-3680

KEY BANK BUILDING
100 CUSHMAN STREET, SUITE 311
FAIRBANKS, ALASKA 99701-4672
(907) 452-1666
TELECOPIER (907) 456-5055

ONE SEALASKA PLAZA, SUITE 301
JUNEAU, ALASKA 99801-1293
(907) 586-2890
TELECOPIER (907) 586-9814

November 22, 1993

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Attention: Chief, FM Branch

Re: BPED-930618MG, New,
Flagler Beach, Florida

On behalf of Cornerstone Community Radio, Inc., this is to request an additional sixty days to respond to the staff's letter of September 21, 1993, regarding the above-referenced application.¹

During the time since the staff's letter was received, Cornerstone has made a diligent effort to resolve the fundamental problem raised by the staff's letter, the mutual exclusivity between its application and that of Community Educational Association for a permit for a new noncommercial educational FM station at Holly Hill, Florida. Specifically, Cornerstone's President and Technical Director identified an alternative frequency for the Holly Hill applicant which would have removed the mutual exclusivity between the applications. That frequency change was proposed to the Holly Hill

¹ That letter sought a response within 60 days, i.e., by not later than November 20, 1993. This letter is filed the first business day thereafter and is, therefore, timely.

William F. Caton
November 22, 1993
Page 2

applicant but was rejected. Cornerstone then sought to identify and secure a transmitter site suitable for its proposed operation on another frequency, also in contemplation of eliminating mutual exclusivity with the Holly Hill application. That effort has thus far been unsuccessful.

Not having succeeded at resolving the mutual exclusivity between its application and the Holly Hill application, Cornerstone then turned to obtaining a "no objection" from WCPX(TV), Channel 6, Orlando. Cornerstone has been assured, orally, by WCPX(TV)'s Chief Engineer, that such a letter will be forthcoming within a few additional days. However, the requirement that the letter be approved by a WCPX(TV)'s senior manager who has been absent from the station on business has caused the signing of that letter to be slightly delayed. The procurement of this letter will enable the staff to waive the requirement for detailed studies of areas and populations potentially subject to interference and will conserve the resources of both the staff and the applicant.

Accordingly, the FCC staff should grant Cornerstone additional time in which to amend its application.

Any questions concerning this matter, and copies of all correspondence, should be directed to me.

Sincerely,

**BIRCH, HORTON, BITTNER
AND CHEROT**


J. Geoffrey Bentley

Attorney for Cornerstone Community
Radio, Inc.

JGB:yc

cc: Kenkel & Associates

332
Folder

LD

FEDERAL COMMUNICATIONS COMMISSION
FCC MAIL SECTION WASHINGTON, DC 20554
21 SEP 1993

SEP 22 8 12 AM '93

IN REPLY REFER TO:
1800B3-BJB

Community Educational Association
2636 Mission Road #42 SY
Tallahassee, FL 32304

Cornerstone Community Radio, Inc.
2596 State Road 44
New Smyrna Beach, FL 32168

In re: NEW(FM), Holly Hill, FL
Community Educational
Association
BPED-930316MF

NEW(FM), Flagler Beach, FL
Cornerstone Community
Radio, Inc.
BPED-930618MG

Dear Applicants:

Preliminary engineering reviews of the subject cochannel applications reveal that the proposed facilities would result in mutual electrical interference if they were constructed as specified in the subject applications. Thus the applications are considered to be mutually exclusive as they now stand. Grant of either of these applications would come only after a comparative hearing.

The policy of the Commission is to avoid sending educational applications to hearing, if at all possible, so that the substantial delays and expenses involved in the hearing can be avoided. This policy finds its underpinnings in the inability of many educational applicants to bear the costs (such as legal fees) that they would incur in prosecuting mutually exclusive applications through the hearing process.

Accordingly, we are taking this opportunity to make you aware of your application's mutual exclusivity. We will withhold further action with respect to the subject applications for a period of sixty (60) days so that you have an opportunity to evaluate the situation and hopefully take such steps as would remove the mutual exclusivity. Possible alternatives include frequency changes to increase the spectral separation of the proposed facilities. Share-time agreements between mutually exclusive educational applicants have also been employed to avoid designating their applications for hearing.

In sum, we urge you to communicate with each other concerning the mutual exclusivity issue and, if possible, to amend your applications so as to remove the present conflict between them.

Regarding Cornerstone Community Radio, Inc.'s application BPED-930618MG, we find that gross errors exist in the analysis pursuant to 47 CFR § 73.525 of this proposal's interference to Channel 6 TV operations. The proposal includes a plot of one FM F(50,10) interfering contour (65.8 dBu) and states that the interfering contour extends 4.7 kilometers from the transmitter site. However, this is not correct. To determine the affected area to Channel 6 operations, a series of ratios must be computed from 47 CFR § 73.599, depending on the TV field strength being considered, and the intersections of the corresponding FM interfering and TV contours plotted. Only then can the population affected be determined. In addition, if the entire interference area thus computed falls outside a city with a population of 50,000 or more, then the applicant may apply for a vertically polarized only effective radiated power 40 times (16 dB) that permitted a horizontally polarized only station, using the formulas in 47 CFR § 73.525(e)(4)(i).¹

For example, a Channel 212 operation would first consider the 47 dBu TV 6 contour. From 47 CFR § 73.599, we find that the corresponding ratio is 21.8 dB. Consequently, the FM interfering contour is the $(47 + 21.8 =)$ 68.8 dBu F(50,10) contour. This contour is plotted and the points of intersection, if any, between the 47 dBu TV contour and the 50.8 dBu FM interfering contour determined. The process is then repeated for the next TV 6 contour, for example, the 48 dBu contour. The § 73.599 ratio for this contour is 21 dB, therefore, the FM F(50,10) interfering contour is the $(48 + 21 =)$ 69 dBu contour, which is then plotted and its points of intersection with the TV 6 48 dBu contour located. Continuing this process, using sufficient numbers of TV and FM contours, the predicted interference area is found by connecting these points of intersection with a smooth curve. Once the area is found, the population affected within this area can be determined to verify compliance with 47 CFR § 73.525.

Consequently, BPED-930618MG must be amended by Cornerstone Community Radio, Inc. to demonstrate compliance with 47 CFR § 73.525. In order for the Commission to evaluate conformance with the requirements of 47 CFR § 73.525, the interference showing should include tabulations of the of the protected TV 6 field strength contours (see the enclosed Public Notice dated July 15, 1985, Mimeo No. 5795); diagrams of the interference area plotted on a Census County Subdivision Map (MCD, CCD, or equivalent); details of any populations adjustments claimed, and tabulations of the number of persons contained within the predicted interference area. The analysis must address all of the applicable requirements of 47 CFR § 73.525.²

¹ Note that the use of a higher vertical power pursuant to 47 CFR § 73.525(e)(4) does not affect either the size or the location of the predicted interference area. The higher vertical power is permitted by this section because the vertically polarized signal has less interference potential than a horizontally polarized one.

²The amendment must include the required Census County Map; this map may not be filed at a later date.

Action on these two applications will be deferred for 60 days, to allow you the opportunity to negotiate and submit any necessary amendments. Failure to respond within this time period will result in these applications being designated for comparative hearing. Please note that any response must be submitted in triplicate through the Office of the Secretary and signed in the same manner as the original application.

Sincerely,



for

Dennis Williams
Chief, FM Branch
Audio Services Division
Mass Media Bureau

cc: Kenkel and Associates
Carl T. Jones Corporation
Birch, Horton, Bittner and Cherot
Richard Van Zandt

Enclosure